

1 **FILED IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF ALABAMA**
3 **SOUTHERN DIVISION**4 2006 MAR 23 AM 10:37
5 **Michael J. Mirras**
6 **Plaintiff**
7 **U.S. DISTRICT COURT**
8 **ALABAMA**9 **Vs.**10 **Case No.:**
11 **Trial by Jury Demanded**12 **Arrow Financial Services**
13 **Defendant**

CV-06-PWG-0568-S

14
15 **PLAINTIFFS' STATEMENT OF CLAIM**
16 **STATEMENT UPON WHICH RELIEF CAN BE GRANTED**
1718 19 COMES NOW the Plaintiff, Michael J. Mirras.
2021 22 Plaintiff respectfully submits Plaintiffs Statement of Claim and Statement Upon
23 Which Relief Can Be Granted.24 **Statement of Claim**
2526 27 The Defendant is a 3rd party debt collector as such is governed under the law by The
28 Fair Debt Collection Practices Act 15 USC Section §1601,*et seq.* and also reports these
29 debts to the national credit reporting agencies i.e. Trans Union, Equifax and Trans
30 Union and Innovis. As such the Defendant is also governed under the law by The Fair
31 Credit Reporting Act 15 USC Section §1681, *et seq.* The State of Alabama abides by
32 and adheres to these laws. Thus establishing the jurisdiction of this honorable court.
33 Specifically section 813[15 USC 1692k] of the FDCA and 618 [15 U.S.C. § 1681p] of
34 the FCRA.35 36 On or about October 2005 the Defendant entered into the Plaintiffs Trans Union
37 Credit report claiming an alleged debt was owed to them in the amount of \$521.00.
38 The Plaintiff contacted the Defendant on October 11,2005 via US Postal Service
39 Certified Mail Return Receipt with a letter of validation asking the Defendant to
40 provide proof of this alleged debt.41 42 To date the Defendant has not responded to the Plaintiffs request for proof/validation.
43 The Defendant has entered derogatory information into the Plaintiff's Credit report
44 and has continually updated this information by adding unauthorized interest and late
45 charges through today's date.46 The Plaintiff has verified with Trans Union on or about November 2005 that they
47 have confirmed that Arrow Financial has verified to them that the information is
48 correct.

47 The Debt Collection Practices Act states a debt collector must cease collection of a
 48 debt if they are asked to provide validation and must provide that validation or cease
 49 collection activity.

50 The Defendant has not ceased collection activity by entering into the Plaintiffs credit
 51 report on the following dates October 2005, November 2005, December 2005, January
 52 2006, February 2006, March 2006 and has violated the Law under Fair Debt
 53 Collection Practices Act 15 USC Section §1601,*et seq* and The Fair Credit Reporting
 54 Act 15 USC Section §1681, *et seq* by updating and knowingly reporting erroneous
 55 and damaging information to the Credit Reporting Agency Trans Union, damaging
 56 the Plaintiffs Credit Standing, Reputation and the Plaintiffs Credit Report.
 57 Recourse is demanded through the Law as outlined in Fair Debt Collection Practices
 58 Act 15 USC Section §1601,*et seq* and Fair Credit Reporting Act 15 USC §1681, *et*
 59 *seq*

60
 61 The Plaintiff denies ever having any contractual agreement for credit, loans or
 62 services relationship with the Defendant.

63 Even if the Plaintiff did have such an agreement, which the Plaintiff denies, the
 64 alleged debt is not in question here as there is no proof of any alleged debt. But
 65 the fact as to how it was or was not validated and wrongful actions of the
 66 Defendant in an attempt to collect the alleged debt, continued collection activity
 67 without proof of any alleged debt, violated the civil rights of the Plaintiff and the
 68 law as outlined in the Debt Collection Practices Act, 15 USC §1601,*et seq*. and
 69 the Fair Credit Reporting Act 15 USC §1681, *et seq*.

70
 71 The Plaintiff requested a copy of his Credit Report from Trans Union in October
 72 2005.

73
 74 Upon inspection of the said report the Plaintiff observed that Arrow Financial
 75 Services was listed on the Plaintiffs Trans Union credit report. Indicating a collection
 76 debt due to Arrow Financial Services. Arrow Financial has never contacted the
 77 Plaintiff at anytime prior to today's date with any allegations of any alleged debt.

78
 79 The Plaintiff has not now or ever had any business affiliation or relationship with
 80 Arrow Financial has never applied for any type of mortgage, loan, credit card or
 81 insurance or employment reasons with the Defendant.

82
 83 The Plaintiff contacted the Defendant by U.S. Postal Service Certified Mail Return
 84 Receipt on October 4, 2005 the Defendant received the certified mailing on October
 85 11, 2005 and as of this date no reply was received from the Defendant.

86
 87 The Plaintiff has requested confirmation/disputed this alleged debt with Trans Union
 88 on several occasions and Trans Union has confirmed that they are reporting it
 89 correctly as advised to Trans Union by Arrow Financial.

90
 91 The Defendant has failed to provide proof/validation of the debt and failed to
 92 contact the Plaintiff within (5) five days of the Plaintiff's request for validation as
 93 outlined in the DCPA/FCRA the law requires informing the Plaintiff of his rights
 94 under the law and that an investigation is being performed. If the Defendant does
 95 not respond to this request, as is his right, the Defendant must CEASE all

96 collection activity. The Defendant has clearly not done this. The Defendant must
 97 also inform notice of dispute to the Major Credit Reporting agencies that the
 98 alleged debt is in dispute, which the Defendant has not done. The Defendant has
 99 continued collection activities by updating the Plaintiffs credit report prior to
 100 validating the alleged debt, has added unauthorized charges and fees to the
 101 alleged account and is visible in the Plaintiffs credit report on the alleged amount
 102 owed prior to validation proof of the alleged debt. The defendant has violated the
 103 law under the Debt Collection Practices Act, 15 USC §1601,*et seq.* and the Fair
 104 Credit Reporting Act 15 USC §1681, *et seq.*

105
 106 Plaintiff invokes his right to this action under the following sections of the FCRA Fair
 107 Credit Reporting Act, §617. Civil liability for negligent noncompliance [15 U.S.C. §
 108 1681o] and under the DCPA § 813. Civil liability [15 USC §1692k]

109
 110 As follows:
 111 **Count I under the Fair Debt Collection Practices Act**
 112 **Failure to Validate the Debt, Failure to Notify the Plaintiff of his rights after**
 113 **initial contact with the Defendant. Defendant has failed to provide the following**
 114 **information once contacted by the Plaintiff and by forwarding the alleged**
 115 **information to the Credit Reporting Agencies has violated this section of the**
 116 **DCPA**

117 **§ 809. Validation of debts [15 USC 1692g]**

118 (a) Within five days after the initial communication with a consumer in connection
 119 with the collection of any debt, a debt collector shall, unless the following
 120 information is contained in the initial communication or the consumer has paid the
 121 debt, send the consumer a written notice containing --

122 (1) the amount of the debt;

123 (2) the name of the creditor to whom the debt is owed;

124 (3) a statement that unless the consumer, within thirty days after receipt of the
 125 notice, disputes the validity of the debt, or any portion thereof, the debt will be
 126 assumed to be valid by the debt collector;

127 (4) a statement that if the consumer notifies the debt collector in writing
 128 within the thirty-day period that the debt, or any portion thereof, is disputed,
 129 the debt collector will obtain verification of the debt or a copy of a judgment
 130 against the consumer and a copy of such verification or judgment will be
 131 mailed to the consumer by the debt collector; and

132 (5) a statement that, upon the consumer's written request within the thirty-day
 133 period, the debt collector will provide the consumer with the name and
 134 address of the original creditor, if different from the current creditor.

135 (b) If the consumer notifies the debt collector in writing within the thirty-day period
 136 described in subsection (a) that the debt, or any portion thereof, is disputed, or that the
 137 consumer requests the name and address of the original creditor, the debt collector
 138 shall cease collection of the debt, or any disputed portion thereof, until the debt
 139 collector obtains verification of the debt or any copy of a judgment, or the name and
 140 address of the original creditor, and a copy of such verification or judgment, or name
 141 and address of the original creditor, is mailed to the consumer by the debt collector.

142

143 Count II through VI under the DCPA**144 Continued collection activity prior to providing validation of the alleged debt to the
145 Plaintiff. § 809. Validation of debts [15 USC 1692g](b)****146 (b) If the consumer notifies the debt collector in writing within the thirty-day period
147 described in subsection (a) that the debt, or any portion thereof, is disputed, or that the
148 consumer requests the name and address of the original creditor, the debt collector
149 shall cease collection of the debt, or any disputed portion thereof, until the debt
150 collector obtains verification of the debt or any copy of a judgment, or the name and
151 address of the original creditor, and a copy of such verification or judgment, or name
152 and address of the original creditor, is mailed to the consumer by the debt collector.**

153

**154 The Defendant has updated on a monthly bases to the Credit Reporting
155 Agencies prior to providing Validation of the alleged debt to the Plaintiff
156 one count for each of the following months, October 2005, November 2005,
157 December 2005, January 2006, February 2006, March 2006 and through
158 today.**

159

160 Count VII through XI under the DCPA**161 Adding unauthorized costs § 808. Unfair practices [15 USC §1692f] Continued
162 collection activity prior to providing validation of the alleged debt to the Plaintiff by
163 adding/reporting unauthorized costs and fees to the Plaintiff's Credit report through
164 the National Credit Reporting agencies every month for five months, total of five
165 counts for each month the alleged debt/account had unauthorized costs and interest
166 updated. Original amount claimed in October 2005 \$521.00 to amount claimed as of
167 today \$815.00****168 Adding additional unauthorized interest and fees to the Credit Report prior to
169 validation of the alleged debt to the Plaintiff by updating to the National Credit
170 Reporting Agencies, October 2005, November 2005, December 2005, January
171 2006, February 2006, March 2006.**

172

173 § 808. Unfair practices [15 USC §1692f]**174 A debt collector may not use unfair or unconscionable means to collect or attempt to
175 collect any debt. Without limiting the general application of the foregoing, the
176 following conduct is a violation of this section:****177 (1) The collection of any amount (including any interest, fee, charge, or
178 expense incidental to the principal obligation) unless such amount is
179 expressly authorized by the agreement creating the debt or permitted by
180 law.****181 The defendant has not produced any document contract or agreement
182 authorizing these charges to the Plaintiff.**

183

184 Plaintiff re-alleges the allegations set forth in lines 1 through 183 hereinabove

185

186 VIOLATION OF THE FAIR CREDIT REPORTING ACT**187 Count XII through XVI****188 According to the Fair Credit Reporting Act, section 623. Responsibilities of
189 furnishers of information to consumer reporting agencies [15 U.S.C. § 1681s-2]:**

190 (a) Duty of furnishers of information to provide accurate information.
 191 (1) Prohibition.
 192 (A) Reporting information with actual knowledge of errors. A person shall not furnish
 193 any information relating to a consumer to any consumer-reporting agency if the
 194 person knows or consciously avoids knowing that the information is inaccurate.

195
 196 **October 2005, November 2005, December 2005, January 2006, February**
 197 **2006, March 2006 and through today. Five counts the defendant has**
 198 **furnished inaccurate information to the Credit Reporting Agencies**

199
 200 **Count XVII through XXI**

201 (B) Reporting information after notice and confirmation of errors. A person shall not
 202 furnish information relating to a consumer to any consumer-reporting agency if
 203 (i) the person has been notified by the consumer, at the address specified by the
 204 person for such notices, that specific information is inaccurate; and
 205 (ii) the information is, in fact, inaccurate.
 206 (2) Duty to correct and update information. A person who
 207 (A) regularly and in the ordinary course of business furnishes information to one or
 208 more consumer reporting agencies about the person's transactions or experiences with
 209 any consumer; and
 210 (B) has furnished to a consumer reporting agency information that the person
 211 determines is not complete or accurate, shall promptly notify the consumer
 212 reporting agency of that determination and provide to the agency any corrections
 213 to that information, or any additional information, that is necessary to make the
 214 information provided by the person to the agency complete and accurate, and
 215 shall not thereafter furnish to the agency any of the information that remains not
 216 complete or accurate.

217
 218 **October 2005, November 2005, December 2005, January 2006, February**
 219 **2006, March 2006 and through today. Five counts Plaintiff notified the**
 220 **Defendant on October 11, 2005 that the alleged debt is in dispute and has**
 221 **informed Defendant of same. Defendant has updated/reported to the Credit**
 222 **Reporting Agencies every month as indicated prior to providing proof of**
 223 **their claim to alleged debt.**

224
 225 **Counts XXII through XVI**

226 (3) Duty to provide notice of dispute. If the completeness or accuracy of any
 227 information furnished by any person to any consumer reporting agency is disputed to
 228 such person by a consumer, the person may not furnish the information to any
 229 consumer reporting agency without notice that such information is disputed by the
 230 consumer.

231
 232 (b) Duties of furnishers of information upon notice of dispute.
 233 (1) In general. After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a
 234 dispute with regard to the completeness or accuracy of any information provided by a
 235 person to a consumer reporting agency, the person shall
 236
 237 (A) conduct an investigation with respect to the disputed information;

238 (B) review all relevant information provided by the consumer reporting agency
 239 pursuant to section 611(a)(2) [§ 1681i];
 240 (C) report the results of the investigation to the consumer reporting agency; and
 241 (D) if the investigation finds that the information is incomplete or inaccurate, report
 242 those results to all other consumer reporting agencies to which the person furnished
 243 the information and that compile and maintain files on consumers on a nationwide
 244 basis.
 245 (2) Deadline. A person shall complete all investigations, reviews, and reports required
 246 under paragraph (1) regarding information provided by the person to a consumer
 247 reporting agency, before the expiration of the period under section 611(a)(1) [§
 248 1681i] within which the consumer reporting agency is required to complete actions
 249 required by that section regarding that information.

250

251 **October 2005, November 2005, December 2005, January 2006, February**
 252 **2006 and through today. Five counts Plaintiff has notified on October 11,**
 253 **2005 that the alleged debt is in dispute and has informed Defendant of**
 254 **same.**

255 **The information from Arrow Financial Services on the Trans Union credit**
 256 **report of Plaintiff does not reflect that the information is disputed by the**
 257 **consumer.**

258

259 Plaintiff invokes his right to bring this action under the following sections of the
 260 FCRA

261 According to the Fair Credit Reporting Act, 616. Civil liability for willful
 262 noncompliance [15 U.S.C. § 1681n], (a) In general. Any person who willfully fails to
 263 comply with any requirement imposed under this title with respect to any consumer is
 264 liable to that consumer in an amount equal to the sum of (1) (A) any actual damages
 265 sustained by the consumer as a result of the failure or damages of not less than \$100
 266 and not more than \$1,000, (2) such amount of punitive damages as the court may
 267 allow; and (3) in the case of any successful action to enforce any liability under this
 268 section, the costs of the action together with reasonable attorney's fees as determined
 269 by the court.

270

271 Plaintiff has a negative Trans Union credit score as of this date and has been denied
 272 credit at reasonable rates because of the willful noncompliance actions and/or
 273 inaction's of the defendant. The defendant has injured the Plaintiff's credit rating,
 274 report and credit worthiness and reputation.

275

276 According to the Fair Credit Reporting Act, 617. Civil liability for negligent
 277 noncompliance [15 U.S.C. § 1681o]

278 (a) In general. Any person who is negligent in failing to comply with any requirement
 279 imposed under this title with respect to any consumer is liable to that consumer in an
 280 amount equal to the sum of

281 (1) any actual damages sustained by the consumer as a result of the failure;
 282
 283 (2) in the case of any successful action to enforce any liability under this section, the
 284 costs of the action together with reasonable attorney's fees as determined by the court.

285

286 Plaintiff re-alleges the allegations set forth in lines 1 through 285 hereinabove

287
288 Plaintiff has a negative Trans Union credit score as of this date and has been denied
289 credit at reasonable rates because of the negligent noncompliance actions and/or
290 inaction of the defendants.
291
292 THEREFORE Plaintiff requests judgment against Defendant for all counts of \$1,000
293 per count plus costs and fees and punitive damages as allowed by the Court.
294
295 WHEREFORE, the Defendant has violated the Fair Credit Reporting Act and the Fair
296 Debt Collection Practices Act, Plaintiff demands judgment in the amount of
297 \$16,000.00 for all combined counts plus all costs of this action along with punitive
298 damages in the amount of \$125,000.00

299
300 Respectfully submitted the 23rd day of March 2006.



301
302
303 Michael J. Miras, Plaintiff
304 12484 Windy Ridge Drive
305 McCalla, AL. 35111
306 (205) 938-1982